

THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.1348 of 2002

Date of Decision: 22nd-9 -2006

Gulab Singh

.....Appellant

v.

**The Secretary & Commissioner, Education
Department, Haryana and others**

.....Respondents

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

Present: Mr.Gulab Singh – appellant in person.

Mr.Ashwani Markenday, AAG, Haryana
for the respondents.

P.S.PATWALIA, J.

The present regular second appeal has been filed by the plaintiff aggrieved against the judgment and decree of the learned Additional District Judge, Kurukshetra vide which the suit filed by the plaintiff was dismissed after reversing the judgment and decree of the trial Court whereby the suit had been partly decreed.

The substantial question of law that arises for determination in this regular second appeal is as to whether the suit filed by the plaintiff in April, 1998 to challenge order dated 21.3.1980 whereby a resignation submitted by the plaintiff was accepted is barred by the law of limitation and has rightly been dismissed by the lower Appellate Court?

The facts of the case as pleaded by the plaintiff are that the plaintiff joined as JBT Teacher in the service of the State of Haryana on 1.10.1963. After

joining, he improved his qualification by passing Prabhakar, B.A. and thereafter M.A. and LL.B.. On acquiring these higher qualifications he made several representations for adjustment in the Government service as per qualifications acquired by him. However, no action was taken on those representations. He also applied for the post of Tehsildar in February, 1975 and Block Development and Panchayat Officer in February, 1976. However, his application was not forwarded by defendant No.5. The plaintiff states that despite being very hard working he was treated unfairly and not allowed the benefits of his higher education. Resultantly, he got fed up and submitted a resignation on 30.7.1975. However, he withdrew the same on 26.8.1975. He again submitted a second resignation on 1.3.1976 which was, however, again withdrawn by him on the very same day. On 5.8.1976 he submitted a representation to the department that he was going on long leave from 6.8.1976 upto 1.12.1997. Accordingly he stopped attending duties from 6.8.1976. On 2.12.1997 the plaintiff went back to the department to resume his duties but he was not allowed to do so. He submitted a reminder and then served a legal notice dated 12.1.1998 through counsel for the same purpose. In response to the legal notice served, defendant No.4 sent a reply vide memo dated 18.2.1998 in which it was mentioned that the resignation submitted by the plaintiff had been accepted by defendant No.3 vide order dated 21.3.1980. It is thereafter that the plaintiff filed the present suit in April, 1998 for declaration to the effect that the order dated 21.3.1980 accepting the resignation of the plaintiff was illegal, null and void and that the plaintiff was entitled to join service from the date he submitted his joining report with all consequential benefits.

On notice, the defendants contested the claim of the plaintiff. It was their case that the plaintiff had again given a three months notice of resignation on 8.4.1976 which was accepted by defendant No.3 on 21.3.1980. It was also stated by the defendants that he had received his final payment of General Provident Fund. It was denied that the plaintiff had applied for any higher post as alleged by

him. A stand was taken that he had resigned voluntarily in order to start his legal practice and in fact he started practicing as an Advocate in District Courts, Jind from 1978 onwards. His resignation was accepted and he was accordingly informed at the address given. Plaintiff filed a replication controverting the allegations made in the written statement.

After examining the controversy, the trial Court partly decreed the suit to the effect that the impugned order dated 21.3.1980 whereby resignation of the plaintiff was accepted with retrospective effect was illegal, null and void and issued certain other directions. However, in appeal, the lower Appellate Court has reversed the findings of the trial Court and dismissed the suit filed by the plaintiff. Aggrieved against the aforesaid judgment, the plaintiff has filed the present regular second appeal.

Before coming to the arguments addressed by the plaintiff who appeared in person and Mr.Ashwani Markenday, Assistant Advocate General, Haryana who appeared for the respondents, it would be necessary to notice some important facts which are admitted in terms of the evidence led by the parties.

The defendants had examined Raj Pal Singh an Assistant from the office of District Primary Education Officer, Kurukshetra as DW-1. Relevant part of his statement as noted by the trial Court is as hereunder:-

“.....He further stated that as per record of department, he has not been relieved after acceptance of his resignation. It is also correct that no intimation regarding acceptance of his resignation was given to the plaintiff. It is further correct that no entry regarding his resignation was made in the service book or personal file or the attendance register. He has also admitted that department has not got the original application for acceptance of his resignation. ...”

On the basis of the aforementioned evidence, the trial Court reached the following conclusions:-

“.....Besides, it has also been admitted by DW1 Raj Pal Singh that plaintiff was not relieved till date no intimation regarding acceptance of his resignation was given to him. ...”

The lower Appellate Court also recorded the following findings after examining the evidence:-

“The plaintiff has laid great stress on the point that he did not receive any intimation regarding the acceptance of his resignation from the department and as per the statement of Raj Pal Singh, Assistant (DW1) there was no proof in the record regarding giving an intimation to the plaintiff about the acceptance of his resignation. Even if it may be taken for the sake of arguments that the intimation regarding the acceptance of resignation was not duly communicated to the plaintiff by the department, then also from the conduct of the plaintiff it is very much evident on the file that the plaintiff did not attend to his duties with effect from 5.8.1976 to December, 1997 and during this period the plaintiff started practicing as an advocate in District Courts, Jind.”

From the statement of DW-1 Raj Pal Singh as examined by the Courts below and the findings recorded it becomes evident that the factum of acceptance of resignation was never communicated to the plaintiff. He only received the same in response to his legal notice in January, 1998.

Apart from this, as regards the stand of the respondents that resignation dated 8.4.1976 was accepted on 21.3.1980, it may be noted that the plaintiff has categorically denied having submitted any resignation on 8.4.1976. The defendants also could not bring on record any letter of resignation submitted by the plaintiff on 8.4.1976. The relevant observations of the trial Court in this regard are as hereunder:-

“....However, the case of the defendants is that they have accepted

the alleged resignation dated 8.4.1976 but they have not brought the same on record and this fact has been admitted by DW1 Raj Pal Singh that department has not got the original application for acceptance of resignation in its possession.”

Under these circumstances on the basis of the evidence on the file the only two resignations are the one which was submitted on 30.7.1975 and withdrawn on 26.8.1975 and the second having been submitted on 1.3.1976 and withdrawn on the very same day.

At this stage, it may be noticed that the defendant-State produced on the record a letter dated 6.6.1979 as Ex.D1 (wrongly referred to as Ex.D2 by the trial Court). While considering this document, the trial Court has observed that mere marking of a document did not dispense with its proof. This document had not been properly exhibited. The plaintiff had denied that it was sent by him. The letter as produced does not even bear the signatures of the plaintiff. The original was not produced in spite of a direction given to the State for its production. Thus the trial Court has concluded that an attested copy of an unsigned document, original of which was not produced and which was not properly exhibited could not be taken into consideration. Notwithstanding the above I have gone through the letter. By the said letter the plaintiff is stating with reference to some earlier resignation that if his resignation is not accepted by 16th of June, then from 2nd July onwards he would appear in the school and resume duties. This document also does not take the case of the State any further regarding resignation having been submitted on 8.4.1976.

In this view of the matter, I am of the opinion that since there is no resignation of 8.4.1976 as alleged by the defendants and the resignation dated 1.3.1976 was withdrawn on the very same day, the alleged acceptance of the resignation on 21.3.1980 is against law. Since there is no resignation of 8.4.1976 there is no question of any such resignation having been accepted. In so far as the

two earlier resignations are concerned they were withdrawn before they could be accepted. Therefore, I have no hesitation in coming to the conclusion that acceptance of the plaintiff's resignation after it had already been withdrawn by him was not in accordance with law.

It is in these circumstances that the plaintiff who appears in person has argued that once he had applied for leave, it was the duty of the Department to inform him regarding its rejection and until he was informed of the rejection, he was entitled to presume that the same was granted. He further submits that since his leave had not been rejected and acceptance of the resignation is against law, he is entitled to be reinstated in service with all consequential benefits. Apart from this, the plaintiff has also argued that the lower Appellate Court has upset the well reasoned judgment passed by the trial Court without recording findings on all material issues and ignoring substantive documentary evidence as also statements of witnesses. As against this, learned counsel for the State submits that the plaintiff is not entitled to any relief in this suit. He states that the plaintiff left his job on 6.8.1976 and then submitted his joining report after two decades in December, 1997. He submitted that in the meanwhile the plaintiff had started practicing as an Advocate. He also obtained a license from the Bar Council of Punjab and Haryana without the permission of the respondents. He maintained the license upto 1.2.1998 when he made request for cancellation of the same. The plaintiff who appears in person, however, contends that although he secured license but he never practiced actively.

Under these circumstances that this Court to consider is whether the view taken by the lower Appellate Court dismissing the suit of the plaintiff on the ground of limitation and as being time barred is valid and deserves to be upheld. It is the admitted position even at the end of the plaintiff that from 6.8.1976 to 1.12.1997 he did not go to the school to attend to his duties. He only submitted his joining report on 2.12.1997. Thus for a long period of more than two decades the

plaintiff remained away from his duties. During this period an order was made by the State Government on 21.3.1980 which had the effect of terminating the relationship of master and servant. Had the plaintiff visited the school during this period, he would have certainly realised that an order had been made in 1980 terminating the relationship of master and servant between the plaintiff and the State. The plaintiff could then have had his remedy against the said order.

Even if it is presumed that the order dated 21.3.1980 is illegal and void and not binding on the plaintiff, still the plaintiff would have had to approach the Court for relief of declaration that the order against him was inoperative and not binding upon him. The same would have to be done within the period of limitation. In **State of Punjab and others v. Gurdev Singh, Ashok Kumar**, reported as 1992(6) SLR 739 the Hon'ble Supreme Court has held that even if an order of dismissal was void and inoperative, it would operate until and unless it is declared to be void and nullity by a competent Court. This declaration has to be given within the prescribed period of limitation. If the statutory limit expires the Court cannot give such a declaration. The Hon'ble Supreme Court further held that such a suit for declaration that an order of dismissal or the termination is wrongful, illegal and ultra vires would be covered by Article 113 of the Limitation Act, 1963 and has to be filed within a period of three years from the date of order. The relevant observations of the Court are as hereunder:-

“6. But none theless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, (1956) AC 736 at p. 769 Lord Redcliffe observed:

“An order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it

quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

7. *Apropos to this principle, Prof. Wade states: “the principle must be equally true even where the ‘brand of invalidity’ is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the Court (see: Administrative Law 6th Ed. p. 352) Prof. Wade sums up these principles*

“The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically is nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his right, or for some other legal reason. In any such case the ‘void’ order remains effective and is in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.” (Ibid p. 352)

8. *It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.”*

xx

xx

xx

xx

xx

xx

xx

xx

xx

xx

11. *The Allahabad High Court in Jagdish Prasad Mathur v. United Provinces Government, AIR 1956 All 114, has taken the view*

that a suit for declaration by a dismissed employee on the ground that this dismissal is void is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State, AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases (State of Punjab v. Ajit Singh, 1988(1) SLR 96 (Pb. & Hry.) and (ii) State of Punjab v. Ram Singh, 1986(3) SLR 379 (Pb. & Hry.) is not correct and stands overruled.”

In the present case, the plaintiff submits that the order of 1980 was never communicated to him till February, 1998 when it was communicated in response to the legal notice sent by the appellant. He therefore submits that the period of limitation should run from that date and therefore the suit which was instituted in April, 1998 was within limitation. In the facts and circumstances of this case it is not possible to accept this contention. It is clear from the facts that the appellant gave in writing that he would not be attending his duties from 6.8.1978 upto 1.12.1997 and thereafter never visited the school upto 2.12.1997. In between in this duration he also secured a license to practice Law. Firstly, no Government employee can unilaterally withdraw from his duties, stay away for over twenty years and then claim that he should be permitted to rejoin. Secondly, a Government servant cannot apply for a license under the Advocates Act, 1961 without specific permission and sanction of his employer. In the present case, this is what the plaintiff has done. It is only in December, 1997 when the plaintiff desired to join his duties that he was immediately informed about the fact that his resignation had been accepted in February, 1980 itself. Had he made an effort to

join his duties earlier this fact would have been intimated to him. Also it cannot be lost sight of the fact that according to the respondents he had received his final payment of General Provident Fund in 1980 itself. Under these circumstances, I am of the opinion that the suit filed in April, 1998 to challenge the order dated 21.3.1980 was beyond the period of limitation and hence has rightly been dismissed on the ground of limitation by the learned lower Appellate Court.

For the reasons aforementioned, I find no merit in this regular second appeal and the same is accordingly dismissed.

September 22nd, 2006.

**(P.S.PATWALIA)
JUDGE**

RC